

MEMORANDUM ENDORSED

**Federal Defenders
OF NEW YORK, INC.**

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Southern District
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September 8, 2020

Hon. Gregory H. Woods
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

**Re: United States v. Heberto Acevedo Molina
20 Cr. 217 (GHW)**

Your Honor:

The parties propose that the change of plea proceeding for Mr. Molina be adjourned until September 29, 2020. Mr. Molina and the government further agree that an exclusion of time under the Speedy Trial Act is warranted under the interests of justice provision of that statute.

Mr. Molina again renews his request that the change of plea proceeding be conducted remotely. Section 15002(b)(2) of the CARES Act provides that a remote proceeding may be ordered if the plea cannot be conducted in person without “seriously jeopardizing public health and safety.” Mr. Molina is a member of the public and believes that several weeks in quarantine as a result of an in-court proceeding will seriously jeopardize his mental and physical health. Given the availability of a remote proceeding and the government’s consent to such a proceeding, we renew our request.

Respectfully submitted,

Mark B. Gombiner
Attorney for Heberto Acevedo Molina

Cc: AUSA Timothy Capozzi

Application denied. This is sophistry, not a credible basis upon which the Court can make the requisite findings. The Court appreciates that the defendant would prefer not to spend time in quarantine--but the statute sets a high bar, and the Court must make specific findings to support its requirements. The Court cannot find on the basis of slack rhetoric that requiring that an inmate comply with the Bureau of Prison's quarantine system, which the Court understands to have been established to protect the health and safety of inmates and the public, will seriously jeopardize public health and safety. The parties are directed to write the Court to provide the Court with a date for either (1) a change of plea hearing, or (2) a further status conference in this case to arrange for next steps in the event that there is no change in plea. The Court reminds the parties that in accordance with the Court's Individual Rules of Practice any request for an adjournment implicating the Speedy Trial Act should be accompanied by an appropriate request and a proposed order. No such request for the exclusion of time was made to the Court in connection with defendant's request to adjourn the most recent change of plea hearing.

SO ORDERED

September 12, 2020
New York, New York


GREGORY H. WOODS
United States District Judge